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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

160412328-6619-02

RIN 0648-BF97

Atlantic Highly Migratory Species; North and South Atlantic 2016 Commercial Swordfish Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule adjusts the 2016 fishing season quotas for North and South Atlantic swordfish based upon 2015 commercial quota underharvests and international quota transfers consistent with the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 13-02 and 13-03. This final rule also simplifies the annual North and South Atlantic quota adjustment process when the adjustment simply applies a previously-adopted formula or measure. Finally, this final rule removes extraneous regulatory text about the percentage of the annual baseline quota allocation that may be carried over in a given year. This final rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective on August 25, 2016.

ADDRESSES: Copies of the supporting documents—including the 2012 Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) for North Atlantic swordfish (Final Rule to Implement the 2012 Atlantic Swordfish Quotas and Other Measures); the 2007 EA, RIR, and FRFA for South Atlantic swordfish (Final Rule to Modify the North and South Atlantic Swordfish Commercial Quotas Based on 2006 ICCAT Recommendations); the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments; and associated documents—are available from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Steve Durkee by phone at 202-670-6637.

FOR FURTHER INFORMATION CONTACT: Steve Durkee by phone at 202-670-6637 or Karyl Brewster-Geisz by phone at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated Atlantic HMS FMP (October 2, 2006; 71 FR 58058). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement ICCAT recommendations.

For North Atlantic swordfish, this final action maintains the U.S. baseline quota of 2,937.6 metric tons (mt) dressed weight (dw) and authorizes the transfer of 18.8 mt dw from the United States to Mauritania as required by ICCAT Recommendation 13-02. For South Atlantic swordfish, this action maintains the U.S. South Atlantic swordfish quota at 75.2 mt dw (100 mt

whole weight (ww)), carries over 75.1 mt dw of 2015 underharvest, and authorizes the transfer of 50 mt ww (37.6 mt dw) to Namibia, 25 mt ww (18.8 mt dw) to Côte d'Ivoire, and 25 mt ww (18.8 mt dw) to Belize, consistent with ICCAT Recommendation 13-03. More specific information regarding the quota calculations can be found below. Additional details regarding the quotas and other actions in this rule and their impacts can be found in the proposed rule (81 FR 36511, June 7, 2016).

North Atlantic Swordfish Quota

At the 2013 ICCAT annual meeting, Recommendation 13-02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 10,301 metric tons (mt) dressed weight (dw) (13,700 mt whole weight (ww)) through 2016. Of this TAC, the United States' baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 13-02 also includes an 18.8 mt dw (25 mt ww) annual quota transfer from the United States to Mauritania and limits underharvest carryover to 15 percent of a contracting party's baseline quota. Therefore, the United States may carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest from 2015 to 2016. This final rule adjusts the U.S. baseline quota for the 2016 fishing year to account for the annual quota transfer to Mauritania and the 2015 underharvest.

The 2016 North Atlantic swordfish baseline quota is 2,937.6 mt dw (3,907 mt ww). The preliminary estimate of North Atlantic swordfish underharvest for 2015 was 2,181.6 mt dw as of December 31, 2015; therefore, NMFS is carrying forward 440.6 mt dw, the maximum carryover allowed under Recommendation 13-02. The 2,937.6 mt dw baseline quota is reduced by the 18.8 mt dw annual quota transfer to Mauritania and increased by the underharvest carryover of 440.6 mt dw, resulting in a final adjusted North Atlantic swordfish quota for the 2016 fishing year of 3,359.4 mt dw ($2,937.6 - 18.8 + 440.6 = 3,359.4$ mt dw). From that adjusted quota, 50 mt dw

will be allocated to the reserve category for inseason adjustments and research, and 300 mt dw will be allocated to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, in accordance with regulations at 50 CFR 635.27(c)(1)(i). This would result in an allocation of 3,009.4 mt dw ($3,359.4 - 50 - 300 = 3,009.4$ mt dw) for the directed category, which would be split equally between two seasons in 2016 (January through June, and July through December) (Table 1).

For clarity, the final rule removes extraneous regulatory text about the percentage of the annual baseline quota allocation that may be carried over in a given year. Under prior ICCAT recommendations, 25 percent of the unused annual baseline could be carried over to the subsequent year. ICCAT Recommendation 13-02 changed the allowable carryover to 15 percent from 2015 on. This change simplifies the regulatory text by removing the reference to the 25-percent carryover allowance to avoid confusion.

South Atlantic Swordfish Quota

In 2013, ICCAT Recommendation 13-03 established the South Atlantic swordfish TAC at 11,278.2 mt dw (15,000 mt ww) for 2014, 2015, and 2016. Of this, the United States receives 75.2 mt dw (100 mt ww). Recommendation 13-03 limits the amount of South Atlantic swordfish underharvest that can be carried forward, and the United States may carry forward up to 100 percent of its baseline quota (75.2 mt dw). Recommendation 13-03 also included a total of 75.2 mt dw (100 mt ww) of quota transfers from the United States to other countries. These transfers were 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

In 2015, U.S. fishermen landed no South Atlantic swordfish according to data available as of December 31, 2015. The adjusted 2015 South Atlantic swordfish quota was 75.1 mt dw

due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2016. NMFS is carrying forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota is then reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2016 fishing year.

Table 1. 2016 North and South Atlantic Swordfish Quotas.

North Atlantic Swordfish Quota (mt dw)		2015	2016
Baseline Quota		2,937.6	2,937.6
International Quota Transfer		(-)18.8 (to Mauritania)	(-)18.8 (to Mauritania)
Total Underharvest from Previous Year ⁺		1,337.4	2,181.6
Underharvest Carryover from Previous Year ⁺		(+) 440.6	(+) 440.6
Adjusted Quota		3,359.4	3,359.4
Quota Allocation	Directed Category	3,009.4	3,009.4
	Incidental Category	300	300
	Reserve Category	50	50
South Atlantic Swordfish Quota (mt dw)		2015	2016
Baseline Quota		75.2	75.2
International Quota Transfers*		(-)75.2	(-)75.2
Total Underharvest from Previous Year ⁺		75.1	75.1
Underharvest Carryover from Previous Year ⁺		75.1	75.1
Adjusted quota		75.1	75.1

+ Allowable underharvest carryover is now capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic. The available 2014 and 2015 underharvests are based on data current as of December 31, 2015; they do not include dead discards, late reports, or changes to the data as a result of quality control adjustments.

* Under Recommendation 13-03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

Modification of the Annual Quota Adjustment Public Notification Process

In the past, NMFS has published proposed swordfish quota specifications annually, allowed for a public comment period, and then issued a final rule. NMFS has done this when adopting new quotas, altering conservation and management measures pursuant to an ICCAT recommendation, or when simply adjusting the swordfish quotas based on formulas or measures codified in regulations previously adopted through notice-and-comment rulemaking (see, e.g.,

regulatory text at 50 CFR 635.27(c)). Where NMFS is simply administering a pre-established formula that is already embodied in regulations, it has limited discretion over implementation. Inviting public notice and comment on these actions may have unnecessarily confused the regulated community, which has not understood the scope of these actions and NMFS' lack of discretion to make changes in these situations. Past public comments have included requests that go well beyond the scope of these actions, including suggestions to carry over underharvests in an amount exceeding the carryover limit, which would be inconsistent with ICCAT recommendations; requests not to carry over any underharvests, which would be inconsistent with the established regulatory formulas; and requests to shut down the commercial swordfish fishery.

To address public confusion and streamline the regulatory process, NMFS notifies the public that beginning in 2017, it will annually adjust the North and South Atlantic swordfish quotas through a final rule without an opportunity for public comment, as appropriate, when such adjustments simply apply a previously-adopted formula and are administrative in nature. NMFS takes such action consistent with requirements of the Administrative Procedure Act. NMFS would continue to undertake notice and comment rulemaking when adopting new quotas or otherwise altering conservation and management measures.

Response to Comments

During the proposed rule comment period, NMFS received one written comment; however, it was not relevant to the proposed action.

Changes from the Proposed Rule

The final rule contains no changes from the proposed rule.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Previously, NMFS determined that proposed rules to implement the North Atlantic swordfish quota (77 FR 25669, May 1, 2012) and South Atlantic swordfish quota (75 FR 35432, June 22, 2010) were consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic, including the Gulf of Mexico and the Caribbean Sea. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This final action to establish the 2016 North and South Atlantic swordfish quotas does not change the framework previously consulted upon; therefore, no additional consultation is required.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 21, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635-ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, revise paragraph (c)(3) to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(3) *Annual adjustments.* NMFS will file with the Office of the Federal Register for publication notice of the following adjustments to or apportionments of the annual quota:

(i) Adjustments to the quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan consistent with the quota provisions of paragraph (c)(1) of this section.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 15 percent of the annual baseline quota allocation. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw). Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section will be subtracted from the landings quota in the following fishing year or from the reserve category.

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